

REMARKS

In the Office Action dated August 31, 2010, it is noted that claims 1–2, 4–8, and 10–13 are pending. The Examiner's reconsideration of the rejection in view the following remarks is respectfully requested.

The drawings stand objected to as failing to show details for reference numbers that are described in the specification. However, the Examiner has not provided *any* indication as to which features are not shown in the figures. Nonetheless, Applicants have taken the time to verify that every reference number used in the specification appears in the drawings. Applicants therefore request withdrawal of the objection.

Claims 1–2, 4–5, 8, and 13 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to point out and distinctly claim the subject matter of the invention.

In particular, the Examiner asserts that the elements of, “means for communicating,” “means for receiving,” “means for processing,” “means for generating,” and “means for purchasing” are not described with respect to the structure, material, or acts relating to the claimed functions.

It should first be noted that claims 8 and 13 are directed to *method* claims. Neither claim 8 nor claim 13 recites a step using a method equivalent of the “means-plus-function” language, and the Examiner’s motivation for rejecting these claims under § 112 is therefore unclear. The Examiner presumably addresses the “means for purchasing” which the methods operate on. Applicants will respond accordingly, but request clarification on this point. As pointed out in MPEP § 2181(II), “The proper test for meeting the definiteness requirement is that the corresponding structure (or material or acts) of a means (or step)-plus-function limitation must

be disclosed in the specification itself in a way that one skilled in the art will understand what structure (or material or acts) will perform the recited function.”

With respect to the “means for communicating,” as recited in claims 1 and 2, it is respectfully pointed out that the present specification describes the “means for communicating 245” as a “transmitter means” at least on page 7, line 9. Those having ordinary skill in the art would be able to devise an appropriate transmitter to perform this function using the present specification as guidance.

With respect to “means for receiving a program,” as recited in claims 1 and 2, it is respectfully pointed out that the present specification describes the “means for receiving 215” as “a receiver” at least on page 6, lines 26–27. Those having ordinary skill in the art would be able to devise an appropriate receiver to perform this function using the present specification as guidance.

With respect to “means for processing,” as recited in claims 1 and 2, it is respectfully pointed out that the present specification describes the “means for processing” as being a part of set top box 115, for example in a smart card. *See* page 4, lines 33–34. Those having ordinary skill in the art would be able to devise an appropriate smart card to perform this function using the present specification as guidance.

With respect to “means for generating,” as recited in claims 1 and 2, it is respectfully pointed out that the present specification describes access devices that include microprocessors and program memories. *See* page 1, lines 33–34. Those having ordinary skill in the art would be able to configure such a microprocessor to perform this function using the present specification as guidance.

With respect to “means for purchasing,” as recited in claims 8 and 13, the present specification describes the access device as including a “means for indicating a desired impulse purchase 240” and a “means for communicating the desired impulse purchase 245” on page 6, lines 1–6. As such, it seems clear that an “access device” as described by the present specification is sufficient to perform the recited “means for purchasing.” Those having ordinary skill in the art would be able to devise an appropriate access device to perform this function using the present specification as guidance.

For at least the above reasons, it is respectfully asserted that claims 1, 2, 8, and 13 are clear in light of the present specification. Reconsideration of the rejection is earnestly solicited.

Claims 1–2, 4–8 and 10–13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0170053 to Peterka et al. (hereinafter “Peterka”) in view of U.S. Patent No. 6,697,489 to Candelore et al. (hereinafter “Candelore”) and further in view of U.S. Patent Publication No. 2003/0140348 to Stewart (hereinafter “Stewart”).

Claim 1 recites, *inter alia*, “An access device comprising ... means for generating a billing record in response to the receipt of the authorization key, wherein the access device transmits the billing record to the service provider.” Claims 2, 7, 8, and 13 recite analogous subject matter. The Examiner concedes that Peterka and Candelore fail to teach this element, but asserts that Stewart cures such deficiencies in its billing control system 114.

However, it should be noted that the present claims recite generating billing records *at the access device*. Stewart’s access device 200 does not include any such billing control system. Instead, the billing control system 114 is formed as part of Stewart’s service provider 100.

Stewart explicitly says this in paragraph 23, stating, “The multimedia broadcast system 100 can further include ... a billing control system 114 that generates a billing code for invoicing a subscriber when a user receives an authorization code.” The billing control system 114 therefore exists only on the service provider side, as shown in Stewart’s FIG. 1.

Stewart’s access device 200 is shown in FIG. 2, and there is no component which could reasonably be interpreted as generating billing records. There is furthermore no indication whatsoever that, even if the access device 200 could generate such records, it could then transmit the record to the service provider 100.

In light of the above arguments and the Examiner’s concessions with respect to Peterka and Candelore, it is respectfully asserted that Peterka, Candelore, and/or Stewart, taken alone or in any combination, fail to disclose or suggest generating a billing record at the access device in response to the receipt of the authorization key, wherein the access device transmits the billing record to the service provider. It is therefore believed that claims 2, 7, 8, and 13 are in condition for allowance. Because claims 4–6 and 10–12 depend from claims 2 and 8 respectively and include all of the subject matter of their parent claims, it is believed that claims 4–6 and 10–12 are also in condition for allowance. Reconsideration of the rejection is earnestly solicited.

In view of the foregoing arguments and amendments, Applicant respectfully requests that the rejections of the claims set forth in the Office Action of August 31, 2010 be withdrawn, that pending claims 1–2, 4–8, and 10–13 be allowed, and that the case proceed to early issuance of Letters Patent in due course.

It is believed that no additional fees or charges are currently due. However, in the event that any additional fees or charges are required at this time in connection with the application, they may be charged to Applicant's representatives Deposit Account No. 07-0832.

Respectfully submitted,

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